

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

Case No. 6:19-cr-60009

DENNIE MORRIS

DEFENDANT

ORDER

Before the Court is Defendant's Motion to Suppress. (ECF No. 17). The government has responded. (ECF No. 18). On July 30, 2019, the Court held a hearing on the motion.¹ The Court finds the matter ripe for consideration.

I. BACKGROUND

Defendant is charged in a one-count Indictment with possession with intent to distribute 50 grams or more of a mixture or substance containing methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii).

On August 21, 2017, Deputy Justin Parker of the Garland County Sheriff's Office ("GSCO") initiated a traffic stop of a silver Chevrolet Silverado for speeding. The truck pulled off the road and stopped in a commercial parking lot, where Deputy Parker made contact with Defendant, the driver and sole occupant. Defendant did not have identification but identified himself. Deputy Parker ran Defendant's information and discovered a Juvenile Failure to Appear Warrant from the Garland County Juvenile Detention Center. After determining the validity of the warrant, Deputy Parker placed Defendant under arrest.

¹ At the hearing, the government offered into evidence the testimony of Deputy Justin Parker and five numbered exhibits.

Deputy Parker asked Defendant if he had a preference as to what towing service would be used to transport his truck, and Defendant replied that he preferred Martin's Towing. Deputy Parker relayed this preference to dispatch and requested that they contact Martin's Towing.

Deputy Parker conducted a pat down of Defendant's person and found a large amount of cash, consisting of \$20- and \$100-dollar bills, in his front pocket. Deputy Parker then placed Defendant in the back of the patrol car. Defendant indicated that he had another wad of cash and a cell phone in a pair of pants in the front seat of his truck, and asked that Deputy Parker retrieve those items. Deputy Parker retrieved another large wad of cash and a cell phone from where Defendant described.

Deputy Parker then conducted a warrantless search of the truck and discovered, *inter alia*, a draw string bag underneath the driver's seat that contained a digital scale, bundles of \$1-dollar bills, and a plastic bag containing methamphetamine. Deputy Parker requested that the Drug Task Force ("DTF") respond to his location. When DTF agents arrived, they took control of the scene and ordered Defendant's truck to be towed. Deputy Parker transported Defendant to the Garland County Detention Center, where he was later interviewed by a DTF agent and, after being advised of his *Miranda* rights, made incriminating statements regarding his involvement with methamphetamine possession and distribution.

Defendant now moves to suppress all evidence and statements uncovered during and as a result of the August 21, 2017 traffic stop. Defendant contends that Deputy Parker conducted an unconstitutional, warrantless search of his truck and that no exception applies to authorize the search. The government contends that Deputy Parker's search of the truck was a valid inventory search and, alternatively, that he had probable cause to conduct a warrantless search of the truck pursuant to the automobile exception.

II. DISCUSSION

The parties' fighting point in both their briefs and at the hearing concerned whether Deputy Parker's search of Defendant's truck was an unconstitutional, warrantless search justifying the suppression of all evidence obtained during the search and thereafter. Thus, the Court's analysis will focus on the constitutionality of that search.²

"The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Mincey v. Arizona*, 437 U.S. 385, 390 (1978). When the government seeks to introduce evidence that was seized during a warrantless search, it bears the burden of showing the need for an exemption from the warrant requirement and that its conduct fell within the bounds of the exception. *Id.* at 391.

One such exception is the so-called inventory search exception, under which law enforcement may search a lawfully impounded vehicle to compile an inventory list of the vehicle's contents without violating the Fourth Amendment. *South Dakota v. Opperman*, 428 U.S. 364, 376 (1976). To do so, officers need neither a search warrant nor probable cause because they are not investigating a crime but, instead, are "performing an administrative or care-taking function." *United States v. Marshall*, 986 F.2d 1171, 1174 (8th Cir. 1993). The propriety of an inventory search "stems from increased concerns on the part of the police and . . . [the owner's] diminished

² Defendant did not argue in his motion or at the suppression hearing that Deputy Parker's search of his person was unconstitutional. However, because Defendant's motion requests suppression of *all* evidence obtained during the traffic stop, the Court will address the pat down out of an abundance of caution. An outstanding warrant provides probable cause to arrest an individual. *United States v. Willis*, 967 F.2d 1220, 1224 (8th Cir. 1992). After lawfully arresting a suspect, officers may reasonably search "the arrestee's person and the area within his immediate control." *United States v. Perdoma*, 621 F.3d 745, 750 (8th Cir. 2010). Deputy Parker lawfully arrested Defendant on an outstanding warrant and then immediately searched his person, uncovering the first wad of cash. Thus, to the extent that Defendant intends to challenge the search of his person, that search was a permissible search incident to arrest.

expectation of privacy in an automobile due to the public nature of automobile travel.” *Id.* “The inventory search exception exists for ‘the protection of the owner’s property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger.’” *United States v. Taylor*, 636 F.3d 461, 464 (8th Cir. 2011) (quoting *Opperman*, 428 U.S. at 369).

An inventory search must nevertheless be reasonable under the totality of the circumstances, *United States v. Hall*, 497 F.3d 846, 851 (8th Cir. 2007), and may not be “a ruse for a general rummaging in order to discover incriminating evidence.” *Florida v. Wells*, 495 U.S. 1, 4 (1990). The reasonableness requirement is met when an inventory search is conducted according to standardized police procedures, which generally “remove the inference that the police have used inventory searches as a purposeful and general means of discovering evidence of a crime.” *Marshall*, 986 F.2d at 1174 (internal quotation marks omitted). Police “may keep their eyes open for potentially incriminating items that they might discover in the course of an inventory search, as long as their sole purpose is not to investigate a crime.” *Id.* at 1176. Even if the officer “suspects he might uncover evidence in a vehicle,” the police can still “tow[] a vehicle and inventory[] the contents, as long as the impoundment is otherwise valid.” *United States v. Petty*, 367 F.3d 1009, 1013 (8th Cir. 2004).

Even when law enforcement fails to conduct an inventory search according to standardized procedures, this does not mandate the suppression of the evidence discovered as a result. *See, e.g., United States v. Mayfield*, 161 F.3d 1143, 1145 (8th Cir. 1998). “Compliance with procedures merely tends to ensure the intrusion is limited to carrying out the government’s care-taking function.” *Id.* There must be “something else” to suggest the police raised “the inventory-search

banner in an after-the-fact attempt to justify” a simple investigatory search for incriminating evidence. *Marshall*, 986 F.2d at 1175.

The government contends that Deputy Parker performed a valid inventory search of Defendant’s truck because he had arrested Defendant and was going to have the truck towed, even before DTF was called. In support, the government offered Deputy Parker’s live testimony at the suppression hearing. Deputy Parker testified that GSCO officers inventory the contents of vehicles that will be towed in order to protect the public from harmful objects found therein, to protect the sheriff’s office from claims regarding stolen or damaged property, and to discourage towing services from stealing or damaging property. Deputy Parker testified that, pursuant to the GSCO’s policies, when an officer arrests a driver of a vehicle, the officer should give the arrestee the choice between leaving the vehicle with another person present at the scene or choosing a towing service to tow the vehicle. Deputy Parker testified that the choice to leave the vehicle with another person was not applicable because Defendant was alone in the vehicle, and, when asked if he had a preferred towing service, Defendant chose Martin’s Towing, which Deputy Parker called.

The government also offered into evidence the GSCO’s general order regarding vehicle tow and wrecker services, which authorizes officers to request a towing service to “remove and store any vehicle in which the operator was apprehended and taken into custody.” (Gov. Ex. 2, p. 2). The towing policy states further that if the vehicle is on private property at the time of the arrest, it shall be towed unless the property owner gives permission for the vehicle to remain on the private property. (Gov. Ex. 2, p. 3). The towing policy also states that officers shall inventory a vehicle that is taken into custody, but that an inventory is not required if the vehicle is to be released to a responsible and reasonable person. (Gov. Ex. 2, p. 1).

Defendant contends that Deputy Parker's inventory search of his truck was merely pretext for an otherwise impermissible investigatory search. To that end, Defendant argues that there was no reason to conduct an inventory search of his vehicle because Deputy Parker arrested him on a failure to appear warrant. Defendant also argues that Deputy Parker failed to complete a vehicle tow report or an inventory report, as required by the GCSO's policies. At the suppression hearing, Defendant argued further that, because Deputy Parker was able to contact Defendant's preferred towing service, Defendant's vehicle was never in police possession but, rather, remained in Defendant's possession because he controlled where the vehicle would be towed, thereby precluding any sort of inventory search. The Court will separately address these arguments.

A. Defendant's Arrest

The Court is unpersuaded by Defendant's argument that there was no need to inventory his vehicle because he was arrested on a failure-to-appear warrant. Deputy Parker's testimony and the GCSO's towing policy indicate that a vehicle will be towed when the driver is arrested and no one else is available to drive it. (Gov. Ex. 2, p. 3). The towing policy also contemplates the towing of a vehicle when the driver is arrested on private property and the property owner does not give consent for the vehicle to be left there. (Gov. Ex. 2, p. 3). The towing policy further provides that an officer should perform an inventory of a towed vehicle to, *inter alia*, protect the owner's property. (Gov. Ex. 2, p. 1).

Defendant was placed under arrest and no one else was present to take the truck. The reason for his arrest is irrelevant in these circumstances; he was lawfully placed under arrest and no one else was present to take his vehicle. "Police may take protective custody of a vehicle when they have arrested its occupants." *United States v. Martin*, 982 F.2d 1236, 1240 (8th Cir. 1993). Additionally, at the time of Defendant's arrest, his truck was parked in a commercial parking lot

and nothing in the record indicates that permission was obtained from the lot's owner to leave the truck there. Deputy Parker's decision to tow Defendant's vehicle and perform an inventory search was in accordance with the GCSO's towing policy. Thus, this argument presents no reason to find that the inventory search was pretextual.

B. Defendant's Preferred Towing Service

The Court is also unpersuaded by Defendant's argument that Deputy Parker could not inventory his truck because Defendant chose his preferred towing service and, thus, his truck remained in his control and possession. Defendant is correct that the GCSO's towing policy contains an "owner preference" provision that instructs officers to give owners of to-be-towed vehicles their choice of either: (1) which towing service to use or (2) a "responsible and reasonable person" to release their "disabled or inoperative vehicle" to. (Gov. Ex. 2, p. 2). The towing policy provides further that if the vehicle owner declines to give a preference or if the chosen preference proves unworkable, the officer may select a towing service to tow the vehicle.

However, nothing in the towing policy states that, if the vehicle owner selects a towing service, the officers then cannot perform an inventory search. The towing policy specifically contemplates only one instance in which an inventory search is not required: when the vehicle is released at the owner's request to a responsible and reasonable person. (Gov. Ex. 2, p. 1). If the GCSO also intended for inventories to not be conducted when the owner chooses a specific towing service, the policy could have so stated. The towing policy does not carve out such an exception, however. Moreover, Deputy Parker testified that, in part, the towing policy requires inventories of towed vehicles to discourage towing services from stealing or damaging property.

The Court finds that, based on the totality of the circumstances, it was reasonable for Deputy Parker to conduct an inventory search even though Defendant chose his preferred towing service.³ Thus, this argument presents no reason to find that the inventory search was pretextual.

C. Towing and Inventory Report

The Court is further unpersuaded by Defendant's argument that the inventory search was pretextual because Deputy Parker failed to complete a towing report or inventory report. The relevant portions of the GCSO's towing policy provide that a vehicle tow report and inventory report must be prepared when a vehicle is ordered towed by an officer. These reports must, *inter alia*, list the steps that must be completed to release any hold on the vehicle; list all valuables found in the vehicle, their location, their condition, and the date and time they were located; and list any damage, however minor, found on the vehicle's interior or exterior. (Gov. Ex. 2, pp. 4-5). At the suppression hearing, the government offered into evidence an "auto storage report," on which Deputy Parker described Defendant's vehicle, noted that it was stored at Martin's Towing, and generally listed the items he found in the vehicle. (Gov. Ex. 3). The government also offered Deputy Parker's narrative notes, in which he, in relevant part, generally lists the items he found in the vehicle. (Gov. Ex. 5, p. 2). Deputy Parker testified upon cross examination that he did not specifically itemize every object found in Defendant's truck, such as individual wrenches, but instead grouped the items in broad categories.

³ Although not necessary for the resolution of this motion, the Court notes that the towing policy's "Owner Preference" provision applies only to "disabled or inoperative vehicle[s]." (Gov. Ex. 2, p. 2). This language is in accord with Arkansas law, which requires that the owner of a to-be-towed disabled or inoperative vehicle be given the choice between a specific towing service or a responsible and reasonable person to relinquish the vehicle to. Ark. Code Ann. § 27-50-1202(6); *see also* Ark. Code Ann. § 27-50-1207. The Arkansas owner's preference statutes have been regularly interpreted as having no application when a vehicle owner is arrested and the vehicle is not disabled or inoperative. *See* Ark. Op. Att'y Gen. No. 2009-084, 2009 WL 1848459 (June 23, 2009); Ark. Op. Att'y Gen. No. 96-010, 1996 WL 101387 (Feb. 22, 1996). Nothing in the record indicates that Defendant's truck was disabled or inoperative at the time of his arrest, so it is questionable whether he was entitled to the so-called owner's preference at all. However, Defendant was nonetheless given the choice, and the Court declines to answer this question because, regardless, his choice of towing service did not preclude an inventory search.

It does not appear that Deputy Parker completed a document specifically labeled as a “towing report” or “inventory report,” but his “auto storage report” contains much of the information required in the towing and inventory reports. However, certain information required by the towing policy appears to be absent, such as the items’ condition and location within the vehicle, and whether there is any damage to the vehicle’s interior or exterior. Deputy Parker’s auto storage report fails to strictly follow the GCSO’s policies regarding the information that must be included in the towing and inventory reports and, thus, the inventory search was not conducted pursuant to standardized police procedures.

However, failure to conduct an inventory pursuant to standardized police procedures does not mandate suppression of evidence. *Mayfield*, 161 F.3d at 1145. “Something else” is required to demonstrate that the inventory search was pretextual. Nothing in this case indicates that Deputy Parker raised “the inventory-search banner in an after-the-fact attempt to justify” a simple investigatory search for incriminating evidence. *Marshall*, 986 F.2d at 1175. This is not a case where the police had prior knowledge of the arrestee’s alleged violations. *See United States v. Taylor*, 636 F.3d 461, 465 (8th Cir. 2011) (finding pretext where the officer testified that a traffic stop, arrest, and inventory search was conducted solely because of the officer’s belief that the suspect had narcotics in the vehicle). In fact, Deputy Parker testified that he did not know who Defendant was prior to the traffic stop, and the Court finds him to be a credible witness. Even assuming *arguendo* that Deputy Parker’s suspicions were aroused by the large wads of cash Defendant possessed, as the government argues in the alternative, “[t]he police are not precluded from conducting inventory searches when they lawfully impound the vehicle of an individual that they also happen to suspect is involved in illegal activity.” *Id.* at 1176.

As discussed above, the Court finds that, under the totality of the circumstances, Deputy Parker's inventory search was reasonable and done in good faith. Deputy Parker had a sufficient basis to conclude that Defendant's vehicle should be impounded and that the exercise of the community caretaking function was warranted. There was no other driver available because Defendant had been arrested. The truck was parked in a commercial business lot and nothing indicates that the lot's owner gave permission to leave the truck there. The GCSO's towing policy calls for vehicles to be towed under these circumstances. Moreover, Deputy Parker's testimony established that one of the reasons for inventorying to-be-towed vehicles is to disincentivize towing services from damaging or stealing personal property. This objective is furthered with an inventory search, regardless of whether the towing service utilized was Defendant's preference or another. Thus, the Court finds that the reasonableness requirement of the Fourth Amendment was satisfied and that Deputy Parker's search of Defendant's truck falls under the inventory search exception.⁴ Accordingly, the evidence and statements obtained during and after the August 21, 2017 traffic stop will not be suppressed.

III. CONCLUSION

For the above-stated reasons, the Court finds that Defendant's motion to suppress evidence (ECF No. 17) should be and hereby is **DENIED**.

IT IS SO ORDERED, this 6th day of August, 2019.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge

⁴ In light of this holding, it is unnecessary for the Court to address the government's alternative argument that Deputy Parker had probable cause to conduct a warrantless search of Defendant's truck pursuant to the automobile exception.